

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

SOHONE, INC. and SOHEIL RAZAVI
Respondents

Case No.: I-00-11130

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code § 6-2701 *et seq.*) and Title 20, Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). Upon Respondents Sohone, Inc. and Soheil Razavi’s untimely plea of Deny to the Notice of Infraction (00-11142), and a request for hearing before this administrative court pursuant to D.C. Code § 6-2712(a)(3), a hearing in this matter was held on May 1, 2001. Appearing at the hearing on behalf of the Government was Mr. Babatunde Adebona, Inspector, Department of Health/Environmental Health Administration. Appearing *pro se* on behalf of Respondents was Mr. Soheil Razavi, owner of Respondent Sohone, Inc.

By Notice of Infraction (00-11130) served January 26, 2001, Respondents were charged with violating 20 DCMR 705.10 for failing to maintain/operate a Stage II vapor recovery

system.¹ The Notice of Infraction alleges that Respondents violated 20 DCMR 705.10 on September 27, 2000 at Respondents' Amoco gas dispensing facility located at 1231 New York Avenue, N.E. (hereinafter "Gas Station"), and sought a fine of \$100.00. Because an alleged violation of 20 DCMR 705.10 is a Class 4 infraction, however, the Government may not seek a fine greater than \$50.00 for a first infraction as set forth in the Notice of Infraction. *See* 16 DCMR 3224.5(x); Order of February 16, 2001 Concerning Failure To Timely Respond To Notice Of Infraction.

On February 16, 2001, this administrative court issued an order finding Respondents in default for failing to respond timely to the Notice of Infraction, and assessed a statutory penalty of \$50.00 in accordance with D.C. Code § 6-2712(f). The February 16 order also required the Government to issue a second Notice of Infraction. Prior to the Government's issuance of the second Notice of Infraction, on March 12, 2001 Respondents filed an untimely plea of Deny and offered a written explanation for their failure to respond timely to the Notice of Infraction. In their explanation, Respondents assert, *inter alia*, that they did not receive a copy of the Notice of Infraction until February 14, 2001 which, Respondents further assert, was after the allotted time for response.²

¹ 20 DCMR 705.10 provides: "The operator of a gasoline dispensing facility shall take the actions necessary to ensure that all parts of the system used at the facility for compliance with the section are maintained in good repair, and to ensure that any person, whether attendant, customer, or other, who uses the facility, does so in accordance with proper operating practices and otherwise in compliance with the requirements of this section."

² The Notice of Infraction (00-11130) was certified on the back as having been served by the Government by mail on January 26, 2001. The front of the Notice of Infraction, however, indicates a service date of January 24, 2001. In cases of conflict between the Certificate of Service's service date and the service date on the face of the Notice of Infraction, this administrative court, in an effort to avoid prejudicing a respondent's time to answer, has deemed

The Government submitted four exhibits at the hearing in support of the Notice of Infraction. PX-100, which was admitted into evidence, is identified as an Inspection Report dated July 18, 2000 for Respondents' Gas Station completed by the charging inspector. PX-101, which was admitted into evidence, is identified as a Re-Inspection Report dated September 27, 2000 for Respondents' Gas Station completed by the charging inspector. PX-102, which was admitted into evidence, is identified as a set of three photographs of gasoline pump stations 1, 4, and 6 taken by the charging inspector on July 18, 2000 at Respondents' Gas Station. PX-103, which was admitted into evidence, is identified as a photocopy of the front and back of a Domestic Return Receipt indicating Respondents' receipt of Article No. 7099 3220 0006 4259 9494 (which the parties concede was the Notice of Infraction 00-11130) on February 13, 2001.

Prior to Respondents' cross-examination of the Government's witness, this administrative court allowed a five-minute recess, from approximately 10:40 AM to 10:45 AM. By 10:57 AM, however, Respondents had not returned to the courtroom. In accordance with District of Columbia Administrative Procedures Act and the Civil Infractions Act of 1985, this administrative court proceeded with the case as a trial *in absentia*, and, given that the

the latest service date as controlling. *See, e.g., Department of Health v. D.C. Community Servs. Inc. et al., OAH Final Order I-00-40265, at n.1; Department of Health v. Multi-Therapeutic Services, Inc. et al., OAH Final Order I-00-40122, at n.1.* In this case, a Notice of Infraction served by mail on January 26, 2001 has a statutory response deadline February 15, 2001 – one day after Respondents claim that they received the Notice of Infraction. As such, Respondents' assertion that they did not receive a copy of the Notice of Infraction until “well after” the time period in which to file an answer is inaccurate. *See* D.C. Code §§ 6-2712(e) and 6-2715.

Government having already presented its case, the matter was adjourned.³ *See* D.C. Code §§ 1-1509; 6-2713.

II. Findings of Fact

1. At all relevant times in this matter, Respondent Soheil Razavi was the owner of Respondent Sohone, Inc., which operates the Gas Station.
2. On July 18, 2000, the Government inspected Respondents' Gas Station. At that time, several maintenance problems at the Gas Station, including leaking hoses and nozzles, were noted in the inspection report, and Respondents were given until July 21, 2000 to correct these problems. PX-100; PX-102.
3. On September 27, 2000, the Government re-inspected Respondents' Gas Station. At that time, all problems identified in the July 18, 2000 inspection report had been corrected. However, the re-inspection report noted that the #2 gasoline pump contained a hose with a deformity called a kink.⁴ PX-101.

³ The Clerk of this administrative court advised the undersigned that at approximately 12:00 PM on May 1, Respondent Soheil Razavi appeared at her office to advise her that he had been waiting in the courtroom for the hearing to reconvene. When advised that the hearing was completed and had been adjourned, Respondent stated that he would send a fax to this administrative court explaining his delay in returning to the hearing as specified, and requesting another opportunity to present a defense. To date, this administrative court has received no such explanation or request from Respondents.

⁴ In this instance, the charging inspector described the kink as a bending and/or flattening of the cylindrical, concentric hose, which interrupts the transportation of gasoline vapors back through the hose to the underground storage tanks during the dispensing of gasoline, thereby causing those vapors to escape instead into the air. *See generally* 20 DCMR 705 (Stage II Vapor Recovery).

4. The kink identified in the hose on the #2 gasoline pump had taken time to develop, and could have been discovered at an earlier stage of the deformity by Respondents during regular inspections and maintenance.
5. Although certified by the Government as having been served on January 26, 2001, Respondents did not receive the Notice of Infraction (00-11130) until February 13, 2001. PX-103.
6. This administrative court received Respondents' answer to Notice of Infraction (00-11130) on March 12, 2001.

II. Conclusions of Law

1. At all relevant times, Respondents were "operators" of the Gas Station for purposes of 20 DCMR 705.10.⁵
2. On September 27, 2000, Respondents violated 20 DCMR 705.10 by failing to take the actions necessary to ensure that all hoses at their Gas Station were maintained in good repair. *See* 20 DCMR 705.10. Accordingly, Respondents are liable for a fine in the amount of \$50.00. *See* 16 DCMR 3224.5(x); Order of February 16, 2001 Concerning Failure To Timely Respond To Notice Of Infraction.
3. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within

⁵ For purposes of 20 DCMR 705.10, an "operator" of a gasoline dispensing facility means "any person who leases, operates, manages, supervises, or controls, directly or indirectly, a gasoline dispensing facility." 20 DCMR 705.11.

the established time limits, “the respondent shall be liable for the penalty established pursuant to § 6-2704(a)(2)(A).”

4. As noted above, Respondents’ plea to the Notice of Infraction was untimely. The evidence establishes that despite the Government’s certified service of the Notice of Infraction on January 26, 2001, Respondents did not receive the Notice of Infraction until February 13, 2001.⁶ PX-103. This, in turn, would have left Respondents only two (2) days in which to respond. Such a truncated response-period is clearly not contemplated by the relevant statute. *See* D.C. Code §§ 6-2712(e), 6-2715.
5. Despite having received the Notice of Infraction on February 13, 2001, however, Respondents did not respond until nearly a month later, *i.e.*, on March 12, 2001. The record is devoid of any evidence to explain Respondents’ delay in responding to the Notice of Infraction once received. While, under these unique circumstances, this administrative court may countenance a limited extension in Respondents’ time to respond to the Notice of Infraction, a month’s extension is neither justified by the record in this case, nor contemplated by the relevant statute. *See* D.C. Code § 6-2712(e), 6-2715.

⁶ As noted above, at the hearing the Government theorized that the delay in Respondents’ receipt of the Notice of Infraction might have been due to the Government’s internal mail problems, or, alternatively, Respondents’ delay in retrieving the document from the post office. Because Respondents failed to return to the hearing room after the recess, they were unavailable to offer any insight on this issue as part of their case-in-chief. Because no evidence has been offered as to either theory, this administrative court need not consider them for purposes of this disposition.

6. In light of these factors, Respondents have not demonstrated good cause for their untimely plea. Accordingly, the \$50.00 penalty assessed by this administrative court's order of February 16, 2001 remains in effect.

Therefore, upon the entire record in this case, it is hereby, this _____ day of _____, 2001:

ORDERED, that Respondents, who are jointly and severally liable for the infraction as charged in Notices of Infraction 00-11130, shall pay a total of **ONE HUNDRED DOLLARS (\$100.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) calendar days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the

placement of a lien on any property owned by Respondents that may be found in the District of Columbia pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **5-22-01**

Mark D. Poindexter
Administrative Judge